



Arb. Appln. No.133 of 2023 in A. No.7511 of 2019

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ABDUL QUDDHOSE, J.

Muthirevula Uma Devi

.. Applicant

VS

1.M/s.IndusInd Bank Limited,
rep. by its Authorised Signatory

2.M/s.Mee Usha Retail
rep. by its Partner

3.S.Tulasi Das

4.Somavarapu Kamala

.. Respondents

This application has been filed to raise the Order of attachment dated 12.03.2020 passed in A.No.7511 of 2019.

2.The applicant was impleaded as a party respondent in A.No.7511 of 2019 pursuant to an order passed by this Court. The applicant claims to be the owner of the property, more fully described in the Schedule to the Judges Summons. She has purchased the property from the third respondent/S.Tulasi Das under a Sale Deed dated 28.01.2020. The third respondent had borrowed money from the first respondent/IndusInd Bank Limited under a Loan Agreement, which contained an Arbitration Clause



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and under the said Agreement, the third respondent/S.Tulasi Das had committed default in the repayment of loan to the first respondent/IndusInd Bank Limited. The first respondent/IndusInd Bank Limited had filed A.No.7511 of 2019 against respondents 2 to 4 herein to secure their interest and had sought for a direction to furnish security and in the event of failure on the part of respondents 2 to 4 to furnish security, had sought for an Order of attachment of the property more fully described in the Schedule to the Judges Summons, which has been purchased by the applicant/third party. Pursuant to the application filed by the first respondent in A.No.7511 of 2019, this Court had directed respondents 2 to 4 to furnish security to the extent of the claim amount by its Order dated 22.11.2019. Respondents 2 to 4 remained exparte in A.No.7511 of 2019 and they continue to remain exparte even now. Since security was not furnished as directed by this Court, this Court, by its Order dated 12.03.2020 ordered attachment of the property, which was earlier owned by the third respondent, which is more fully described in the schedule to the Judges Summons.

3.The present Application has been filed by the purchaser of the property, who has purchased the property, which is more fully described in



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the schedule to the Judges Summons, from the third respondent under a Sale Deed dated 28.01.2020, registered as Document No.1962 of 2020 on the ground that she is a bonafide purchaser, who has paid valuable sale consideration and not aware of the pendency of the application, namely, A.No.7511 of 2019 filed by the first respondent against respondents 2 to 4 in this Application.

4.A counter affidavit has been filed by the first respondent denying the contentions of the applicant that she is a bonafide purchaser. According to the first respondent, respondents 2 to 4 were very much aware about A.No.7511 of 2019 filed for attachment and the third respondent, only with an intent to defeat, defraud and with the connivance of the applicant, had sold the property to the applicant.

5.The applicant has stated in the affidavit filed in support of this application that the property, more fully described in the Schedule to the Judges Summons, was mortgaged with Bank of India on 24.02.2016, which is also reflected in the Encumbrance Certificate. She would submit that despite knowledge of the same, the first respondent had filed A.No.7511 of



2019 seeking for attachment of the very same property. The applicant claims that she has settled the dues of the secured creditor, namely, Bank of India and only thereafter purchased the property without having any knowledge of A.No.7511 of 2019 filed by the first respondent against respondents 2 to 4.

6.The following are the undisputed facts:

a)Respondents 2 to 4 were directed to furnish security by this Court by its Order dated 22.11.2019;

b)The order of attachment over the subject property was passed by this Court on 12.03.2020 without hearing the respondents 2 to 4, as they had remained exparte in A.No.7511 of 2019;

c)The applicant has purchased the property, more fully described in the Schedule to the Judges Summons under a Sale Deed dated 28.01.2020 from the third respondent;

d)As seen from the Encumbrance Certificate, produced by the learned counsel for the applicant, mortgage created by the third respondent with Bank of India on 24.02.2016 in respect of the property more fully described in the Schedule to the Judges Summons, is also reflected. The first respondent, who is the applicant in A.No.7511 of 2019 had not filed the



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Encumbrance Certificate along with the Application seeking for attachment of the property more fully described in the Schedule to the Judges Summons. The applicant had purchased the property on 28.01.2020 prior to the attachment order dated 12.03.2020 from the third respondent;

e)The applicant has purchased the property, which is a flat under a Sale Deed dated 28.01.2020 by paying a sale consideration of Rs.33,00,000/-.

7.From the un-disputed facts, it is clear that the applicant has purchased the property by paying a sale consideration of Rs.33,00,000/- to the third respondent even prior to the attachment order dated 12.03.2020. The first respondent has also not produced any documentary evidence before this Court to establish that the applicant had knowledge about the filing of the application in A.No.7511 of 2019 and the Orders passed by this Court, namely, direction to furnish security as well as the Order of attachment.

8.Admittedly, the property was mortgaged with a secured creditor, namely, Bank of India by the third respondent even prior to the filing of the



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application by the first respondent in A.No.7511 of 2019 and the same is also reflected in the Encumbrance Certificate. The first respondent had also not filed the Encumbrance Certificate along with A.No.7511 of 2019, which will clearly reveal that there was an existing mortgage over the property with Bank of India. The applicant also claims that she has discharged the loan, availed by the third respondent, directly with Bank of India and only thereafter, by paying the valuable sale consideration has purchased the property. The applicant claims that she is a bonafide purchaser, having no knowledge about A.No.7511 of 2019 and having no knowledge about the orders passed by this Court, namely, a direction to furnish security as well as the order for attachment.

9.For the foregoing reasons, this Court is of the view that the applicant is a bonafide purchaser having no knowledge about A.No.7511 of 2019 as well as the directions issued by this Court for furnishing security as well as the order granting attachment of the property more fully described in the Schedule to the Judges Summons. The applicant has also purchased the property prior to the order of attachment dated 12.03.2020.



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10. In the result, there is merit in this application filed by the applicant and accordingly, this application has to be allowed by raising the order of attachment dated 12.03.2020 passed in A.No.7511 of 2019 as the applicant is a bonafide purchaser. Accordingly, this application is allowed as prayed for.

11. Registry is directed to communicate this Order to the concerned Sub Registrar's Office as well as to the concerned jurisdiction Court for effective implementation of this order.

26.07.2023

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